

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 15TH FEBRUARY 2007 / 26TH MAGHA 1928

Crl.MC.No. 332 of 2007()

AGAINST THE ORDER DATED 22/01/2007 IN TMP.97/07 IN
CRMP.142/2007 of I ADDL. ASSISTANT SESSIONS COURT, THRISSUR
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PETITIONER:

NADATHI KUNHIMOHAMMED,
S/O.MOIDEEN HAJI, PADINJAREPURAKKAL HOUSE,
MANANTHALA VILLAGE, THIRUVATHRA P.O.,
CHAVAKKAD, THRISSUR.

BY ADV. SRI.T.K.AJITH KUMAR

RESPONDENTS:

1. STATE OF KERALA, BY THE
SUB INSPECTOR OF POLICE, CHAVAKKAD,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
2. SHARAFU @ SHARAFUDDIN (A1),
S/O.ABOOBACKER, KOZHIKKODAN HOUSE,
THIRUVATHRA DESOM, MANANTHALA VILLAGE,
CHAVAKKAD.
3. SHAMEER (A3), S/O.HAMZA, RAMIVEETIL,
THIRUVATHRA DESOM, MANANTHALA VILLAGE,
CHAVAKKAD.
4. MAMD (A3), S/O.MOIDEEN,
NANINANVEEDU, THIRUVATHRA DESOM,
MANANTHALA VILLAGE, CHAVAKKAD.
5. BADARU (A4), S/O.SAIDUMOHAMMED,
KOTTAPPURATH VEEDU, THIRUVATHRA DESOM,
MANANTHALA VILLAGE, CHAVAKKAD.

BY P.P. SRI.GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 15/02/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 332 OF 2007

Dated this the 15th day of February, 2007

ORDER

The grievance of the petitioner – the injured, is that his application for transfer was disposed of by the learned Sessions Judge unjustifiably after advancing the transfer petition without giving him an opportunity to advance his contentions.

2. The petitioner is the victim in S.C.No.302/01 pending before the I Additional Assistant Sessions Judge, Thrissur. The accused in that case had come to this Court with Crl.M.C.No.3955/06 praying that expeditious disposal of the said case may be directed. Report of the learned Sessions Judge was called for and the learned I Additional Sessions Judge reported that the matter stands posted for trial from 20/1/07 to 24/1/07 and that the matter can be disposed of by 28/2/2007.

3. According to the petitioner, this method was resorted to by the accused persons who knew clearly that C.W.1 – the

informant – an eye witness, will not be available for trial. It is further submitted that the accused persons were fully aware that there was no Prosecutor to prosecute the cases before the I Additional Assistant Sessions Judge. Taking advantage of these circumstances and in their anxiety to ensure that the case is some how disposed of without proper prosecution, such an application was filed, it is submitted. This Court had only directed that the learned Sessions Judge must attempt to dispose of the matter by 28/2/2006 as undertaken by him.

4. The learned Sessions Judge cannot be found fault with for rejecting the application for transfer in the facts and circumstances of this case. The learned counsel for the petitioner was requested to explain his grievance. It is submitted that there is no Prosecutor appointed to conduct cases before the I Additional Assistant Sessions Judge. Some very junior lawyer is being deputed by the Prosecutor to conduct the case in that court. He does not even have the files of the case. In these circumstances, proper prosecution has become impossible, it is submitted. The learned counsel for the petitioner further submits that he has filed an application under Sec.301(2) of the Cr.P.C. to permit him to avail the services of a counsel for the conduct of the prosecution in accordance with

law.

5. While I am ready agreement that S.C.No.302/01 deserves to be disposed of as expeditiously as possible, I would like to impress upon the learned Assistant Sessions Judge that it is his duty to ensure that the prosecution is conducted properly. The learned Sessions Judge must consider the petitioner's application under Sec.301(2) of the Cr.P.C. and pass appropriate orders. If the learned Assistant Sessions Judge is not satisfied that the counsel, who is entrusted with the responsibility of prosecuting, is not properly conducting the prosecution, it must be ensured by the learned Judge that the Prosecutor-in-charge does himself appear and assist the court in the conduct of the prosecution. If the time limit prescribed cannot be complied with, extension of time must be sought. Compliance of the target, cannot obviously be at the expense of justice. The learned Judge must be conscious of this oft repeated adage.

6. With the above observations, this Crl.M.C. is dismissed.

Sd/-

(R. BASANT, JUDGE)

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P.S. To Judge